

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FROESE CUSTOM HARVESTING

v.

DEERE AND COMPANY
SOUTH PLAINS IMPLEMENT, LTD.

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CIVIL ACTION NO. 4:13-cv-2978

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO EXTEND TIME

Plaintiff Froese Custom Harvesting asks the Court to extend the time to file a motion for summary judgment on Defendants Deere and Company and South Plains Implement, Ltd.'s affirmative defenses, as authorized by FRCP 6(b).

A. INTRODUCTION

1. Plaintiff is Froese Custom Harvesting; and, Deere and Company and South Plains Implement, Ltd. are the defendants.
2. Froese sued Deere and SPI to recover for fire damage to its 2012 Deere 7760 cotton harvester. Froese's cotton harvester was destroyed by fire 66 days after purchase.
3. The Court's scheduling order calls for the parties to file all dispositive motions by Thursday, October 2014.
4. Froese filed this motion to extend time to file dispositive motions, because it has been apprised that it will not receive deposition transcripts from party witnesses for South Plains Implement, Ltd. until Monday, November 3, 2014. South Plains Implement, Ltd.'s party witnesses were deposed on Friday, October 24, 2014 in Seminole, Texas.
5. The transcripts from the depositions of South Plains Implement, Ltd. employees Layton Fehr, Dairold Lambert, and Geoff Gray are essential to the preparation of Froese's motion, as well as to the preparation of responses to motions filed by Deere and Company and South Plains Implement, Ltd.

B. ARGUMENT

6. A Court may grant a request to extend time for good cause. FRCP 6(b) (1) (A); see, Jenkins v. Commonwealth Land Title Ins. Co., 95 F.3d 791, 795 (9th Cir. 199).
7. Froese requests an extension of time to obtain the deposition transcripts of South Plains Implement, Ltd. party witnesses Layton Fehr, Dairold Lambert, and Geoff Gray, in order to complete Froese's motion for summary judgment on the defendants' affirmative defenses. Additionally, Froese needs to acquire the same deposition

transcripts in order to respond fully to other motions filed by the defendants.

8. The Court reporting service retained by Deere and SPI's counsel has represented that it cannot deliver the deposition transcripts until Monday, November 3, 2014.

9. Froese asks the Court to extend the deadline for filing of dispositive motions until Monday, November 10, 2014.

10. Froese's request to extend time is for good cause and is not intended to delay these proceedings. See, FRCP 6(b)

(1) (A)

11. The extension will not prejudice the defendants; and it will not be an inconvenience to the Court; opposing parties; or witnesses. See, *Cardenas v. City of Chi.*, 646 F.3d 1001, 1006 (7th Cir. 2011); *U.S. v. \$100,375 in U.S. Currency*, 70 F.3d 438, 440 (6th Cir.1995).

C. CONCLUSION

12. For the above reasons, Froese requests that the Court extend the time to file dispositive motions until November 10, 2014.

Respectfully Submitted,

THE SHEPHERD LAW FIRM

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**COUNSEL FOR PLAINTIFF
FROESE CUSTOM HARVESTING**

From: Kathryn Wright <Kathryn.Wright@crcnational.com>;
To: wpshepherdsr@sbcglobal.net <wpshepherdsr@sbcglobal.net>;
Cc: Brenda Wright <bwright@wrightwatson.com>; Lisa Marinari <Lisa.Marinari@crcnational.com>;
Subject: RE: Froese
Sent: Tue, Oct 28, 2014 7:52:00 PM

Mr. Shepherd,

The earliest the reporter will be able to get these transcripts to us will be Monday morning. We will get them to you as soon as possible on Monday and will make sure to include both electronic versions for you to view.

Let us know if you need anything else.

Kathryn Wright
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-----Original Message-----

From: Wendell P. Shepherd, Sr. [mailto:wpshepherdsr@sbcglobal.net]
Sent: Tuesday, October 28, 2014 10:51 AM
To: Brenda Wright
Cc: Wendell P. Shepherd, Sr.
Subject: Froese

Brenda,

I need to get rush copies of the transcripts from the Fehr, Lambert, and Gray depositions taken last Friday. Please e-mail copies of these transcripts, along with the Jason Breuer transcript, rather than sending them by iDepo which we have had trouble opening. Thank you for your continued courtesies extended.

Sincerely,
Wendell

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DECLARATION UNDER PENALTY OF PERJURY

"I declare under penalty of perjury that the foregoing is true and correct."

EXECUTED on October 30, 2014.


Declarant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Plaintiff's Motion to Extend Time" was forwarded to Defendants Deere and Company and South Plains Implement, Ltd, by and through their counsel of record, Chris Blackerby, by facsimile transmission; electronic mail; and/or first-class mail on October 30, 2014.

By: Wendell P. Shepherd, Sr.
Wendell P. Shepherd, Sr.

CERTIFICATE OF CONFERENCE

I hereby certify that I f made reasonable efforts to confer Chris Blackerby, counsel for Deere and Company and South Plains Implement, Ltd. to determine whether opposes or does not oppose "Plaintiff's Motion to Extend" on October 30, 2014. As of the time of this filing, Mr. Blackerby had not responded. Accordingly, I cannot represent to the Court whether Mr. Blackerby opposes or does not oppose the motion.

By: Wendell P. Shepherd, Sr.
Wendell P. Shepherd, Sr.

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ORDER ON PLAINTIFF'S MOTION TO EXTEND TIME

After considering Plaintiff Froese Custom Harvesting's motion to extend time and the response, the Court:

FINDS that there is cause to extend the time for Plaintiff Froese Custom Harvesting to file a dispositive motion. Therefore, the Court grants the motion and extends the time for Plaintiff Froese Custom Harvesting to file a dispositive motion to November 10, 2014

SIGNED on _____ 2014.

U.S. DISTRICT JUDGE

APPROVED AND ENTRY REQUESTED:

THE SHEPHERD LAW FIRM

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